



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**CERTIFIED MAIL RETURN**  
**RECEIPT REQUESTED**

Karen Schutte

JUN 20 2019

Tucson, AZ 85704

RE: MUR 7073  
Alexander Meluskey, *et al.*

Dear Ms. Schutte:

This is in reference to the complaint you filed with the Federal Election Commission on May 23, 2016, concerning possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), involving Alexander Meluskey ("Meluskey") and Meluskey for U.S. Senate, Inc. and Julianne Ryan in her official capacity as treasurer (the "Committee"). Based on information provided in the complaint and information provided in the responses, the Commission, on December 12, 2017, found that there was reason to believe that Meluskey violated 52 U.S.C. § 30102(e)(1) by failing to file a timely Statement of Candidacy and the Committee violated 52 U.S.C. §§ 30104(b)(2) and 30120(a) by failing to disclose in-kind contributions and by failing to include the appropriate disclaimers in episodes of "The Alex Meluskey Show." The Commission found no reason to believe that the Committee violated 52 U.S.C. § 30104(b)(5)(A) or 6(a) by failing to disclose disbursements it made for printing. In addition, there were insufficient votes to find reason to believe that the Committee violated 52 U.S.C. § 30104(b) by failing to accurately disclose the source of funds Meluskey loaned to the Committee. On the same date, the Commission closed its file as to Salem Media Group, Inc., Prescott Valley Broadcasting Co., Inc., and Premier Radio Stations, LLC.

On June 12, 2019, the Commission accepted a signed conciliation agreement with Meluskey and the Committee to resolve their violations of the Act. Accordingly, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). Copies of the conciliation agreement with Meluskey and the Committee and the Factual and Legal Analysis, which address the findings upon which a majority of the Commission agreed, are enclosed for your information. One or more Statements of Reasons will also follow.

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Alexander Meluskey MUR: 7073
Meluskey for U.S. Senate, Inc. and Julianne Ryan
in her official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission (the "Commission") by Karen Schutte. The Complaint alleges that 2016 Arizona Republican primary candidate for the U.S. Senate Alexander Meluskey and his principal campaign committee, Meluskey for U.S. Senate, Inc. and Julianne Ryan in her official capacity as treasurer (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by failing to disclose disbursements for printing expenses. The Complaint also alleges that Meluskey used his weekly talk radio show to engage in campaign activity and, therefore, the funder of the radio show made contributions to the Committee, which the Committee failed to disclose.

As an initial matter, the Commission finds reason to believe that Meluskey failed to file a timely Statement of Candidacy, in violation of 52 U.S.C. § 30102(e)(1). The Commission finds, however, that there is no reason to believe that the Committee failed to disclose its printing expenses, in violation of 52 U.S.C. § 30104(b). The Commission then finds reason to believe that the Committee accepted and failed to disclose in-kind contributions in connection with

1 In addition to the allegations implicating possible violations of the Act, the Complaint also alleges that Meluskey publicly misrepresented that he is the Arizona State Director of the organization FAIRTax. Compl. at 1 (May 23, 2016). The Complaint claims both that the organization is fictitious and that Meluskey does not hold a position with it. See id. Meluskey has rebutted these allegations with a sworn declaration, in which he provided a working link to FAIRTax's website and swore that he was the Arizona State Director. Alexander Meluskey Decl. ¶ 14 (Aug. 26, 2016).

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1 Meluskey's talk radio show and failed to include disclaimers in the radio broadcasts, in violation  
2 of 52 U.S.C. §§ 30104(b) and 30120(a).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Alexander Meluskey was a candidate for Senate in the 2016 Arizona Republican Primary  
5 Election.<sup>2</sup> Both before and during his candidacy, Meluskey owned a printing business, Optimum  
6 Graphics USA, LLC ("Optimum Graphics"), owned and hosted a weekly talk radio show, "The  
7 Alex Meluskey Show," which aired on three Arizona radio stations, and was the state director of  
8 FAIRtax, a 501(c)(4) organization dedicated to reforming the Tax Code.<sup>3</sup> Meluskey filed a  
9 Statement of Candidacy on May 27, 2015,<sup>4</sup> and suspended his campaign on July 31, 2016, about  
10 a month prior to the August 30, 2016 Republican Primary.<sup>5</sup>

11 **A. There is Reason to Believe that Meluskey Failed to Timely File his Statement**  
12 **of Candidacy**

13  
14 Within fifteen days of becoming a candidate, the candidate must designate a principal  
15 campaign committee by filing a Statement of Candidacy with the Commission.<sup>6</sup> The principal  
16 campaign committee must file a Statement of Organization within ten days of its designation,<sup>7</sup>

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<sup>2</sup> Alexander Meluskey, *Statement of Candidacy (May 27, 2015)* ("Statement of Candidacy").

<sup>3</sup> Compl. at 1; Meluskey Decl. ¶¶ 1-2, 7, 14, 16-18; *About Americans for Fair Taxation, FAIRTAX*, <https://fairtax.org/about> (last visited Apr. 11, 2017).

<sup>4</sup> *Statement of Candidacy*, *supra* note 2.

<sup>5</sup> Meluskey Decl. ¶ 4; *2016 Primary Election ~ August 30, 2016, ARIZ. SEC'Y OF STATE*, <http://apps.azsos.gov/election/2016/Primary/ElectionInformation.htm> (last visited Apr. 11, 2017).

<sup>6</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

<sup>7</sup> 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a).

1 and must file disclosure reports with the Commission in accordance with 52 U.S.C. § 30104(a)  
2 and (b).<sup>8</sup>

3 The record indicates that Meluskey became a candidate on or about February 10, 2015.<sup>9</sup>  
4 Accordingly, his Statement of Candidacy was due on or about February 25, 2015. However, he  
5 waited until May 27, 2015, after the Commission provided him with a disavowal notice, to file  
6 his Statement of Candidacy.<sup>10</sup> Accordingly, Meluskey filed his Statement of Candidacy  
7 approximately three months late, and the Commission finds reason to believe that he violated 52  
8 U.S.C. § 30102(e)(1).<sup>11</sup>

9 **B. There is No Reason to Believe that the Committee Failed to Disclose Its**  
10 **Printing Expenses**

11 A candidate's principal campaign committee must disclose its disbursements in periodic  
12 reports to the Commission.<sup>12</sup> Specifically, the committee must disclose the name and address of  
13

<sup>8</sup> See, e.g., Factual & Legal Analysis at 6, MUR 6735 (Friends of Joe Sestak); Factual & Legal Analysis at 5, MUR 6449 (Bruning for Senate 2012 Exploratory Committee); Factual & Legal Analysis at 2, MUR 5363 (Rev. Al Sharpton Presidential Exploratory Committee).

<sup>9</sup> See 52 U.S.C. § 30101(2); Meluskey for U.S. Senate, Inc., Schedule B, 2015 April Quarterly Report (Apr. 20, 2015) ("2015 April Quarterly Report") (indicating the Meluskey Committee disbursed over \$5,000 in connection with the primary election by February 10, 2015); Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (Amendment 1) (Oct. 7, 2015) (acknowledging that Meluskey had become a candidate on February 13, 2015).

<sup>10</sup> Alexander Meluskey, Disavowal Notice (May 26, 2015). The Commission sends a disavowal notice when it appears that a person has become a candidate but has not yet filed a Statement of Candidacy. See *id.* The notice instructs the person to either disavow the financial activities that appear to have triggered his candidate status or file a Statement of Candidacy. See *id.*

<sup>11</sup> Because the Committee registered with the Commission on March 10, 2015—prior to Meluskey filing his Statement of Candidacy—and filed a 2015 April Quarterly Report, Meluskey's late filing did not cause the Committee to miss any reports or the deadline for organizing as a committee. See 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(a); Meluskey for U.S. Senate, Inc., Statement of Organization (Mar. 10, 2015); 2015 April Quarterly Report, *supra* note 9.

<sup>12</sup> 52 U.S.C. § 30104(a)(2), (b)(4)-(5); 11 C.F.R. §§ 104.3(b)(2), (4), 104.5(a).

1 any person to whom it disburses, in aggregate, more than \$200, together with the date, amount,  
2 and purpose of the expenditure.<sup>13</sup>

3 The Complaint alleges that, despite the Committee distributing items like posters and  
4 fliers, "there have never been any disclosures for printing done by Optimum Graphics or for that  
5 matter any other 'printing.'"<sup>14</sup> However, contrary to the allegation, the Committee's reports  
6 disclose numerous disbursements for printing. As the Committee stated in its Response, it  
7 reported seven printing disbursements to Optimum Graphics between May 2015 and April 2016,  
8 totaling \$49,893.<sup>15</sup> The Committee also reported tens of thousands of dollars of disbursements to  
9 other companies for "printing," "copying," and the production of printed materials, such as  
10 mailers, yard signs, newspaper inserts, and banners.<sup>16</sup> As there is no information suggesting that  
11 the Committee's disclosure was incomplete, the Commission finds no reason to believe that the  
12 Committee violated 52 U.S.C. § 30104(b)(5)(A) or (6)(A) by failing to disclose expenses for  
13 printing.

<sup>13</sup> 52 U.S.C. § 30104(b)(5)(A), (6)(A); 11 C.F.R. § 104.3(b)(4).

<sup>14</sup> Compl. at 1 & Attach. C.

<sup>15</sup> Committee Resp. at 4 (Aug. 29, 2016); *see also* Meluskey Decl. ¶ 11. Meluskey also swore that the Committee paid Optimum Graphics the full market value of the printing, and we have no information contradicting his declaration. *See* Meluskey Decl. ¶ 12. Therefore, to any extent the Complaint asserts that the Committee failed to disclose contributions from Optimum Graphics, the Response rebuts that allegation. *See* 11 C.F.R. § 100.52(d)(1) (stating that a discount on goods and services constitutes a contribution).

<sup>16</sup> *See* Schedule B of the Committee's 2015 April Quarterly, October Quarterly, and Year-End Reports and 2016 April Quarterly, July Quarterly, Pre-Primary, and October Quarterly Reports.

1           **C.     There is Reason to Believe that the Committee Accepted and Failed to**  
2           **Report Contributions and Failed to Include the Appropriate Disclaimers in**  
3           **Connection with Meluskey's Radio Show**

4  
5           The Act and Commission regulations define "contribution" and "expenditure" to include  
6 any gift of money or "anything of value" for the purpose of influencing a federal election.<sup>17</sup> The  
7 term "anything of value" includes in-kind contributions.<sup>18</sup> "Anything of value," however, does  
8 not include the provision of goods and services at the usual and normal charge.<sup>19</sup> Candidate  
9 committees must disclose the identity of any person who makes contributions aggregating in  
10 excess of \$200 within an election cycle.<sup>20</sup> Corporations are prohibited from making  
11 contributions to a candidate for Federal office.<sup>21</sup> Candidate committees are prohibited from  
12 knowingly accepting contributions from corporations and limited liability companies that elect to  
13 be treated as corporations by the Internal Revenue Service.<sup>22</sup>

14           1.     The Press Exemption Does Not Apply to the "Alex Meluskey Show"

15           Exempt from the definition of "contribution" and "expenditure" is "[a]ny cost incurred in  
16 covering or carrying a news story, commentary, or editorial by any broadcasting station . . . Web  
17 site, newspaper, magazine, or other periodical publication . . . unless the facility is owned or  
18 controlled by any political party, political committee, or candidate[.]"<sup>23</sup> This exemption is

17           52 U.S.C. § 30101(8)(A)(i), (9)(A)(i).

18           11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

19           *Id.*

20           52 U.S.C. § 30104(b)(3)(A).

21           *Id.* § 30118(a); 11 C.F.R. § 114.2(b).

22           52 U.S.C. § 30118(a); 11 C.F.R. §§ 110.1(g), 114.2(b).

23           52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132.

1 known as the “press exemption” or “media exemption.”<sup>24</sup> A communication subject to the press  
2 exemption is also exempt from the Act’s disclosure, disclaimer, and reporting requirements.<sup>25</sup>

3 In order to assess whether the press exemption applies to a communication, the  
4 Commission uses a two-part test.<sup>26</sup> First, it asks whether the entity that engaged in the activity is  
5 a “press entity” as described by the Act and regulations.<sup>27</sup> Second, if the entity is a press entity,  
6 the exemption will apply so long as it (a) is not owned or controlled by a political party, political  
7 committee, or candidate, and (b) is acting within its “legitimate press function” in conducting the  
8 activity.<sup>28</sup> Where, as here, a candidate owns or controls a radio show that features express  
9 advocacy and the candidate pays to broadcast it, the press exemption does not apply.<sup>29</sup>

10 Meluskey began hosting the “Alex Meluskey Show,” sometimes known as “Fair Tax for  
11 All Radio,” in approximately August 2013.<sup>30</sup> Meluskey contracted with radio stations to  
12 broadcast the show. Each episode of the show aired on three Arizona radio stations: KKNT,  
13 KQNA, and KFNX.<sup>31</sup> The stations are owned by Salem Media Group, Inc. (“Salem”), Prescott

<sup>24</sup> Advisory Op. 2010-08 (Citizens United) at 3 (“AO 2010-08”).

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 4; Advisory Op. 2005-16 (Fired Up!) at 4 (“AO 2005-16”).

<sup>27</sup> AO 2010-08 at 4; AO 2005-16 at 4.

<sup>28</sup> *Reader's Digest Ass'n, Inc. v. Fed. Election Comm'n*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

<sup>29</sup> See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; *Reader's Digest Ass'n, Inc.*, 509 F. Supp. at 1215.

<sup>30</sup> Meluskey Decl. ¶ 2; *The Alex Meluskey Show*, FACEBOOK, <https://www.facebook.com/TheAlexMeluskeyShow/> (last visited Apr. 11, 2017) (“The Alex Meluskey Show Facebook Page”).

<sup>31</sup> The Alex Meluskey Show Facebook Page, *supra* note 30.

1 Valley Broadcasting Co., Inc. ("Prescott Valley"), and Premier Radio Stations, LLC ("Premier"),  
2 respectively.

3 Recent episodes of "The Alex Meluskey Show" are available online as podcasts. The last  
4 five episodes that Meluskey hosted as a candidate (those airing between May 28, 2016, and  
5 June 25, 2016) are available in this format.<sup>32</sup> After the June 25 episode, Meluskey's campaign  
6 manager, Craig Bergman, took over the show because Meluskey believed that the Act's  
7 restrictions on electioneering prevented him from continuing to host in the run-up to the  
8 primary.<sup>33</sup> Bergman hosted five shows before Meluskey dropped out of the race.<sup>34</sup> Meluskey  
9 resumed hosting the show after he withdrew his candidacy.<sup>35</sup>

10 The Complaint alleges that Meluskey used his radio show to campaign for the U.S.  
11 Senate, and thus the person or entity that paid for the airtime made an undisclosed contribution to  
12 the Committee.<sup>36</sup> In Response, the Committee contends that Meluskey began hosting the show  
13 before he became a candidate and that the purpose of the show is "to discuss current events and  
14 provide commentary on items of interest to the citizens of Arizona," not campaign for office.<sup>37</sup>  
15 Information in the record indicates that Meluskey purchased airtime and related services for his  
16 show at the usual and normal rate. This evidence shows that Meluskey was not a paid radio host

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<sup>32</sup> See *The Alex Meluskey Show*, SOUNDCLOUD, <https://soundcloud.com/alexmeluskey> (last visited Apr. 11, 2017) ("SoundCloud").

<sup>33</sup> *Id.* (June 25, 2016 episode at minute 1:14).

<sup>34</sup> See *id.* (July 2, 9, 16, 23, and 30, 2016 episodes).

<sup>35</sup> See Meluskey Decl. ¶¶ 17-18; see generally SoundCloud, *supra* note 32.

<sup>36</sup> Compl. at 1.

<sup>37</sup> Committee Resp. at 2, 5-6.

1 employed by the radio station; rather, Meluskey paid Salem, Prescott Valley, and Premier to  
2 broadcast and promote the "The Alex Meluskey Show."

3 The information in the record does not establish how, or through what entity, Meluskey  
4 made payments to KKNT, KQNA, and KFNX to air his radio show. Information available to the  
5 Commission establishes that there are three possible payors: Meluskey in his individual capacity,  
6 Optimum Graphics, and Virtuous Communications, LLC ("Virtuous Communications").  
7 Virtuous Communications is a limited liability company registered in Arizona.<sup>38</sup> Meluskey is its  
8 sole member.<sup>39</sup>

9 The Commission concludes that the press exemption does not apply to "The Alex  
10 Meluskey Show" because Meluskey (or organizations he owned) owned and controlled the show  
11 while he was a candidate<sup>40</sup> and Meluskey (or an entity he owned) paid to air the show.<sup>41</sup>

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<sup>38</sup> Virtuous Communications, LLC, Articles of Organization, Az. Corp. Comm'n (Jan. 21, 2015), available at <http://corporations.images.azcc.gov/04956008.pdf>.

<sup>39</sup> *Id.*

<sup>40</sup> The fact that the candidate owned and controlled "The Alex Meluskey Show" and paid to air his own commentary distinguishes this matter from a number of other matters where the press exemption applied to press organizations that employed candidates to host shows owned or controlled by the radio stations. See Factual & Legal Analysis, MUR 6242 (J.D. Hayworth 2010) (finding no reason to believe a committee violated the Act when a radio station broadcast employed a radio host who was a candidate); MUR 5555 (Friends of Dave Ross); MUR 4689 (Dorman) (finding no reason to believe a committee violated the Act when a candidate employed by a radio station served as a guest-host on several nationally syndicated radio shows); Advisory Op. 1994-15 (Byrne) (concluding no contribution results from the broadcast of a regularly scheduled radio show hosted by a candidate informing listeners on issues and lacking express advocacy or solicitations for contributions).

<sup>41</sup> See 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. §§ 100.73, 100.132; *Reader's Digest Ass'n, Inc.*, 509 F. Supp. at 1215.

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1 Moreover, the show included express advocacy and solicited contributions to Meluskey's  
2 campaign.<sup>42</sup>

3 2. "The Alex Meluskey Show" Engaged in Express Advocacy and Solicited  
4 Contributions Without the Required Disclaimers  
5

6 Because the press exemption does not exempt "The Alex Meluskey Show" from the  
7 Act's disclaimer requirements, the Commission reviews whether Meluskey made solicitations  
8 and engaged in express advocacy on the air. The Commission concludes that he did, and that  
9 episodes of "The Alex Meluskey Show" therefore required disclaimers.

10 Whenever a person airs a public communication that solicits contributions or expressly  
11 advocates the election or defeat of a clearly identified candidate, that person must include a  
12 disclaimer in the communication, with specific language set out in the regulations.<sup>43</sup>

13 Commission regulations define "solicit" as "to ask, request, or recommend, explicitly or  
14 implicitly, that another person make a contribution . . ."<sup>44</sup> The regulations also provide that a  
15 "solicitation" is a "communication that, construed as reasonably understood in the context in

<sup>42</sup> Compare Vice Chairman Darryl Wold & Commissioners Lee Ann Elliot, David A. Mason & Karl J. Sandstrom, Statement of Reasons for Voting to Withdraw the Commission's Complaint in *FEC v. Forbes, et al.* at 3 (May 26, 1999) ("None of the columns mentioned directly or indirectly that Mr. Forbes was a candidate for President, mentioned any other candidate for President, referred in any way to the presidential campaign . . . [nor increased] the exposure given to Mr. Forbes' columns in the magazine, nor the distribution of the magazine.")

<sup>43</sup> 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). The term "public communication" includes communications "by means of any broadcast." 52 U.S.C. § 30101(22). A candidate is "clearly identified" when the communication includes the name or a photograph or drawing of the candidate or "the identity of the candidate is apparent by unambiguous reference." *Id.* § 30101(18).

<sup>44</sup> 11 C.F.R. § 300.2(m). While the definitions in Part 300 of the Commission regulations apply to the Bipartisan Campaign Finance Reform Act of 2002 ("BCRA"), the Commission has used 11 C.F.R. § 300.2(m)'s definition of "solicit" and "solicitation" to inform its analysis of non-BCRA portions of the Act. See Factual & Legal Analysis, MUR 6528 (Michael Grimm for Congress); see also Factual & Legal Analysis at 4 & n.16, MUR:6827 (Kent Roth for Kansas) (citing *Sorenson v. Secretary of Treasury*, 475 U.S. 851, 860 (1986), for the proposition that "[t]he normal rule of statutory construction assumes that identical words used in different parts of the same act are intended to have the same meaning" (internal quotation marks omitted)).

1 which it is made, contains a clear message asking, requesting, or recommending that another  
2 person make a contribution . . . .<sup>45</sup>

3 A review of the available episodes that Meluskey hosted as a candidate shows that, every  
4 week, Meluskey solicited contributions to his campaign.<sup>46</sup> For example, Meluskey directed  
5 people to his website so that they could make contributions, stated that they “need to go out” and  
6 “contribute” to his campaign, told his listeners that he is “counting on [their] support,” said that  
7 he would love his listeners’ support and he needs “all the contributions [he] can get,” and  
8 emphasized his opponent’s fundraising advantage over his own.<sup>47</sup> During his final episode  
9 before the election, Meluskey also gave people instructions on how to purchase tickets to one of  
10 his fundraising events and stated that he would appreciate everyone who attends.<sup>48</sup> Moreover,  
11 Meluskey acknowledged that his on-air solicitations were successful during his June 11 episode,  
12 when he stated that he sometimes noticed a “flux” of contributions on days that his show was  
13 airing.<sup>49</sup>

14 Furthermore, during many of the episodes, Meluskey and Bergman expressly advocated  
15 the election or defeat of a clearly identified candidate. Meluskey told his listeners that they  
16 “need to go out” and vote for him, “the one candidate that . . . can actually win in November,”  
17 and Bergman asked people to “[v]ote for [his] friend Alex,” and told listeners that the person

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<sup>45</sup> 11 C.F.R. § 300.2(m).

<sup>46</sup> *See generally* SoundCloud, *supra* note 32.

<sup>47</sup> *See id.* (May 28, 2016 episode at minute 2:49; June 4, 2016 episode at minute 42:00; June 11, 2016 episode at minutes 13:23 and 28:27; June 18, 2016 episode at minute 1:08; and June 25, 2016 episode at minutes 10:36, 12:30, 21:06, and 25:04); *see also* 11 C.F.R. § 300.2(m).

<sup>48</sup> SoundCloud, *supra* note 32 (June 25, 2016 episode at minute 25:04).

<sup>49</sup> *Id.* (June 11, 2016 episode at minute 28:27).

1 they "want to vote for is the real, true, proven conservative, Alex Meluskey."<sup>50</sup> By naming  
2 Meluskey and asking or telling people to vote for him, the show engaged in express advocacy of  
3 a clearly identified candidate.<sup>51</sup>

4 Because any public communication that solicits contributions for a candidate or expressly  
5 advocates the election of a clearly identified candidate requires a disclaimer, and none of the  
6 available episodes of "The Alex Meluskey Show" contained disclaimers, the Commission finds  
7 reason to believe that the Committee violated 52 U.S.C. § 30120(a).

8 3. The Funding for "The Alex Meluskey Show" is a Contribution, but the  
9 Source of the Contribution is not Clear

10  
11 By soliciting contributions and expressly advocating his own election, Meluskey also  
12 evidenced an intent to influence a federal election. This means that any money spent on airing  
13 the show was a contribution to the Committee, which the Committee was obligated to disclose.<sup>52</sup>  
14 The existing record is unclear, however, on whether Meluskey paid for the show with his  
15 personal funds, or from funds controlled by Virtuous Communications or Optimum Graphics.

16 If Meluskey paid for the show using his personal funds, the Committee could accept the  
17 contributions because candidates may make unlimited contributions to their committees from  
18 their personal funds but still must report those contributions.<sup>53</sup> However, if Virtuous  
19 Communications or Optimum Graphics, each a limited liability company with unknown federal

<sup>50</sup> *Id.* (June 25, 2016 episode at minute 10:36; July 2, 2016 episode at minute 6:11; July 16, 2016 episode at minute 13:58).

<sup>51</sup> 52 U.S.C. § 30101(18); 11 C.F.R. § 100.22.

<sup>52</sup> See 52 U.S.C. §§ 30101(8)(A)(i), 30104(b)(3)(A).

<sup>53</sup> See 11 C.F.R. § 110.10.

1 tax status, paid for the show, the Committee may have accepted a prohibited corporate  
2 contribution depending on the corporate tax status of the entity.<sup>54</sup>

3 In light of the uncertainty as to who paid for the radio show, and given information that  
4 suggests LLCs controlled by Meluskey might have paid for the show, the Commission does not  
5 resolve at this time whether the Committee accepted prohibited contributions, in violation of 52  
6 U.S.C. § 30118(a). However, because the Committee failed to disclose payments for the radio  
7 show as in-kind contributions, the Commission finds reason to believe that the Committee  
8 violated 52 U.S.C. § 30104(b) and authorizes discovery of the source of the payments.

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<sup>54</sup> See *id.* § 110.1(g).



1           2. Meluskey filed his Statement of Candidacy with the Commission on May 27,  
2 2015. He designated Meluskey for U.S. Senate, Inc. as his principal campaign committee.  
3 Julianne Ryan is the treasurer of Meluskey for U.S. Senate, Inc.

4           3. Before and during his candidacy, Meluskey purchased one hour of air time  
5 each week to broadcast his self-hosted radio show on three radio stations in Arizona. The show  
6 was first known as "Fair Tax for All Radio" and was already airing on KKNT in Phoenix,  
7 Arizona when Meluskey became a candidate in February 2015. On June 6, 2015, a second radio  
8 station, KFNX, began broadcasting the show also in the Phoenix area, and the show was  
9 renamed, "The Alex Meluskey Show." In May 2016, a third radio station, KQNA, began  
10 running the show in Prescott Valley, Arizona.

11           4. From June 2015 through July 2016, 128 broadcasts of "The Alex Meluskey  
12 Show" ran on the three radio stations. In these broadcasts, Meluskey discussed his campaign,  
13 criticized his primary opponent, Senator McCain, discussed his positions on policy issues, and  
14 expressly advocated his election and the defeat of his opponent as well as solicited contributions  
15 to his campaign without including any disclaimers.

16           5. Meluskey's single member LLC, Virtuous Communications, LLC, made  
17 payments totaling \$16,235.29 to broadcast the radio show from June 2015 through July 2016.

18           6. Under the Federal Election Campaign Act of 1971, as amended (the "Act") an  
19 individual becomes a candidate when: (a) such individual receives contributions or makes  
20 expenditures in excess of \$5,000; or (b) such individual gives his or her consent to another  
21 person to receive contributions or make expenditures on behalf of such individual, and if such  
22 person has received contributions or has made expenditures in excess of \$5,000. 52 U.S.C.

1 § 30101(2); 11 C.F.R. § 100.3(a)(1)-(2). Once the \$5,000 threshold has been met, the candidate  
2 has fifteen days to designate a principal campaign committee by filing a Statement of Candidacy  
3 with the Commission. 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a). The principal campaign  
4 committee must file a Statement of Organization within ten days of its designation. 52 U.S.C.  
5 § 30103(a); 11 C.F.R. § 102.1(a).

6 7. The Act and Commission regulations define “contribution” and “expenditure”  
7 to include the gift of “anything of value” for the purpose of influencing a federal election. 52  
8 U.S.C. § 30101(8)(A)(i), (9)(A)(i). “Anything of value” in both contexts includes all in-kind  
9 contributions. 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1). All contributions to and expenditures  
10 by a principal campaign committee must be reported in accordance with 52 U.S.C. § 30104(a)  
11 and (b).

12 8. For the purpose of contribution source limitations, contributions from single  
13 member LLCs that do not elect to be treated as a corporation “shall be attributed only to that  
14 single member and subject to the contribution limits of that sole member.” 11 C.F.R.  
15 § 110.1(g)(4). Commission regulations permit a candidate to use his or her personal funds to  
16 make unlimited contributions to his campaign. *See* 11 C.F.R. 110.10.

17 9. In addition, whenever a person airs a public communication that solicits  
18 contributions or expressly advocates the election or defeat of a clearly identified candidate, that  
19 person must include a disclaimer in the communication, with specific language set out in the  
20 regulations. 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2)-(3), (b), (c). The term “public  
21 communication” includes communications “by means of any broadcast.” 52 U.S.C.  
22 § 30101(22).

1           10. Meluskey became a candidate on February 10, 2015, but he did not file a  
2 Statement of Candidacy until May 27, 2015.

3           11. Once Meluskey became a candidate, he used his radio show to influence the  
4 outcome of his campaign for U.S. Senate by, among other things, soliciting contributions and  
5 expressly advocating his election and the defeat of his opponent.

6           12. Meluskey's single member LLC, Virtuous Communications, paid \$16,235.29  
7 to broadcast the show on the three stations from June 2015 through July 2016, but Meluskey's  
8 Committee failed to disclose any of these payments as in-kind contributions on any of its reports  
9 filed with the Commission covering the period of Meluskey's candidacy.

10           13. At least 80 broadcasts of the "The Alex Meluskey Show" that aired during  
11 Meluskey's candidacy contained solicitations or express advocacy without the required  
12 disclaimers.

13           V. Respondents committed the following violations:

14           1. Meluskey violated 52 U.S.C. § 30102(e)(1) by failing to file a Statement of  
15 Candidacy within 15 days after becoming a candidate.

16           2. The Committee violated 52 U.S.C. § 30104(b) by failing to disclose  
17 \$16,235.29 in contributions and expenditures in its reports disclosing receipts and contributions  
18 from June 2015 through July 2016, which funds were used to fund a weekly radio talk show  
19 hosted by Meluskey.

20           3. The Committee violated 52 U.S.C. § 30120(a) by failing to include required  
21 disclaimers on radio broadcasts that solicited contributions and contained express advocacy.

22           VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the  
23 amount of Four Thousand Dollars (\$4,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).



1 FOR THE COMMISSION:

2 Lisa J. Stevenson  
3 Acting General Counsel  
4

5 BY:   
6 \_\_\_\_\_  
7 Charles Kitcher  
8 Acting Associate General Counsel  
9 for Enforcement

6/20/19  
\_\_\_\_\_  
Date

10 FOR THE RESPONDENTS:

11   
12 \_\_\_\_\_  
13 Trevor M. Stanley  
Counsel

5/23/19  
\_\_\_\_\_  
Date

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